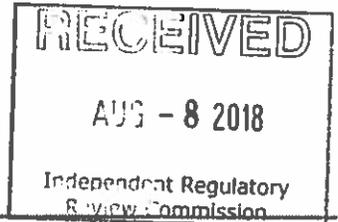


3202

**Kathy Cooper**

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**From:** Smolock, Bryan <bsmolock@pa.gov>  
**Sent:** Wednesday, August 08, 2018 3:32 PM  
**To:** Kathy Cooper; IRRC; Haffner, Garrett; Rapach, Jennifer Buchanan; Schramm, Robert (LI-OCC)  
**Subject:** Fwd: proposed overtime regulations  
**Attachments:** 2016 0617 PAR Testimony on DOL Overtime Rule Draft 3.docx



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**From:** [sspreat@woods.org](mailto:sspreat@woods.org)  
**Sent:** Tuesday, August 7, 2018 11:25 AM  
**To:** Smolock, Bryan  
**Cc:** [shirley@par.net](mailto:shirley@par.net)  
**Subject:** proposed overtime regulations

Dear Mr. Smolock,

On 6/21/16, I presented testimony to a joint meeting of the Pennsylvania Senate Labor & Industry Committee and the Pennsylvania Senate Appropriations Committee. The testimony addressed the changes in the overtime rule that had been proposed by the US Department of Labor. Given the similarity of the proposed Pennsylvania overtime rules and the earlier Department of Labor overtime rules, my comments from that time pertain equally to current proposed Pennsylvania regulations. A copy of my testimony is attached.

The proposal to increase the overtime threshold to \$47892 per year will result in significant costs to the intellectual disability/autism field. Based on the results of a PAR compensation study of First Line Supervisors, we estimated that paying just the First Line Supervisors overtime would cost in the neighborhood of an additional \$25 million per year. To boost their salaries about the overtime threshold (and thereby avoid paying overtime) would cost about \$52 million additional per year. These two options would represent either a 1% or 2% increase in costs to provider budgets (depending on which option was selected). These cost increases derive solely from the First Line Supervisor positions. Inclusion of clinical specialists, instructors, and/or program managers will increase these costs substantially.

It is absolutely critical that the Bureau of Labor, the IRRC, and, more broadly, the policymakers in Pennsylvania government to understand that the sole payer for intellectual disability/autism services is government. That means funding for these services is solely paid by the Commonwealth of Pennsylvania and, for the most part, matched by the federal government. There is no private pay or private insurance in our system. Providers cannot raise taxes like school districts. Providers can't raise prices like the local hardware store. Because 75-80% of our current budgets go to staff salaries and benefits already, there is little cost shifting that we can do to accommodate these mandated increased expenses. That means that we have no way to cover the costs of this rule without action by either the Commonwealth of Pennsylvania in setting our rates or the federal government in providing a higher Medicaid match to cover these costs - or a combination of both.

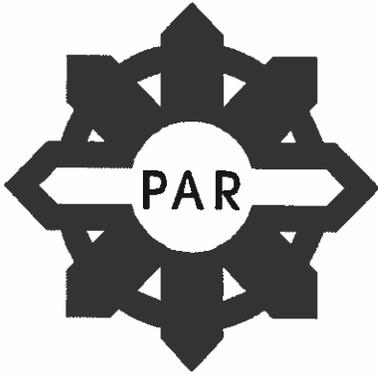
Wages and compensation in the ID/A system should be competitive. For too long, these wages have been stagnant. It is in this vein that I do not oppose the proposed changes to the "overtime rule." Nevertheless, it is an unfunded mandate on a system in which 1/3 of providers lose money each year already. Without action by the Commonwealth of Pennsylvania or the federal government, it is nearly impossible to envision how these higher wages will be paid.

Please note that my own organization, Woods Services, complied with the Department of Labor proposed (and subsequently put on hold) standards. Adopting the most fiscally conservative approach, we estimate that the annual cost of compliance was just over \$500,000 in an annual budget of about \$120 million. This figure is closer to ½ percent, rather than the 1-2 percent we projected, but it was nevertheless a large amount to pay.

Scott Spreat, Ed.D.  
Woods Services  
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Pennsylvania Advocacy and Resources  
for Autism and Intellectual Disability

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**TESTIMONY**

**Presented To:**

**The Senate Labor and Industry Committee & The Senate Appropriations Committee**

**By:**

**Dr. Scott Spreat, President and CEO  
Woods Services, Inc.**

**Board Member – Pennsylvania Advocacy & Resources for Autism and Intellectual Disability  
(PAR)**

**June 21, 2016**

**Good morning Chairman Browne, Chairwoman Baker, Chairman Hughes, Chairwoman Tartaglione and members of the Senate Appropriations and Labor and Industry Committees. Thank you for the opportunity to address this committee.**

**I am Dr. Scott Spreat, President and CEO of Woods Services and a PAR Board Member. PAR is the only statewide provider association whose mission is solely to provide services to people with autism and to people with intellectual disability. Our members provide the full range of services and supports from residential services to in-home services, from day services to employment. We provide services to tens of thousands of individuals in Pennsylvania who have an intellectual disability and/or autism (ID/A).**

**I appreciate both committees taking the time to closely examine the recently issued so-called "overtime rule" that has been put forward by the United States Department of Labor. Other witnesses before you today have clearly outlined and explained this rule, its application, and its overall impact. I am here today to testify to the impact of the rule on ID/A providers in Pennsylvania.**

**Upon the issuance of the "overtime rule," PAR immediately began to take steps to quantify the impact of the rule on ID/A providers. We crafted a scientific survey and pilot tested the survey. On June 9, 2016, we distributed the survey to our members. Responses to the survey were due by June 17, 2016. We have taken the data gathered and are glad to share it with you today.**

Today, I am going to provide you with some preliminary data regarding the impact that the new Department of Labor overtime rules will likely have on the intellectual disability and autism industry. The data I will present derive from a survey of PAR membership. The data must be considered preliminary because I anticipate that additional survey responses will come in over the next two weeks. The data from the 45 respondents will at least offer you a sense of the potential impact of these new guidelines. We will focus on First Line Supervisors because we believe them to be the most affected group and because we are able to estimate the total number of First Line Supervisors in Pennsylvania.

**First Line Supervisors** – First Line Supervisors are the lowest paid management staff. Few make more than the new Department of Labor \$47,476 threshold for overtime entitlement. We have data regarding 1,900 First Line Supervisors from the current survey. From the results of the 2015 PAR wage study (Spreat, Brown-McHale, & Walker, 2016), we extrapolate that there are 4,011 First Line Supervisors working in the intellectual disability/autism industry in Pennsylvania.

The typical first line supervisor currently earns about \$35,770 (median is \$35,000), and they tend to work about five (5) hours of overtime each week. Much of this overtime comes from arriving early to ensure that the shift is fully staffed and remaining late in order to communicate with the next shift. These activities seem entirely justified by the responsibilities of the First Line Supervisor position.

Providers have several options with which to respond to the Department of Labor guidelines. They could reduce salaries, such that the net income (salary plus overtime) essentially equals the current salary. Alternatively, they could place strict guidelines on the use of overtime, effectively eliminating the necessary shift set-up and post-shift communication. Neither of these approaches seems acceptable. Two options remain. They could pay the First Line Supervisors the Department of Labor threshold of \$47,476, or they could pay First Line Supervisors overtime. The impact of each is estimated below.

Increase Salary - If all providers were to increase the pay for First Line Supervisors referenced in this study to the Department of Labor \$47,476 minimum, the cost to the providers in this survey would be about **\$24,873,473** (including 7.65% in additional withholding tax). Under this model, the estimated (and we stress estimated) cost to bump the average First Line Supervisor to the Department of Labor threshold of \$47,476 would be **\$13,091 per First Line Supervisor**. Based on data from the 2015 PAR wage study, we can extrapolate that there are at least 4,011 First Line Supervisors in the Pennsylvania Intellectual Disability system. At \$13,091 per supervisor, the total cost to bump all Pennsylvania First Line Supervisors to the Department of Labor threshold would be about **\$52,508,001**.

Pay Overtime - A less expensive alternative would involve paying First Line Supervisors overtime. Using the estimates of overtime hours worked and the average hourly pay (and overtime at 1.5 times that), we estimate that the option of holding supervisor salaries constant

and paying overtime would result in a cost of approximately \$6,609 (including additional social security withholding) per supervisor. Across the 4,011 supervisors, this generates a cost of just \$26,509,047. Note that neither of these estimates include salary adjustments that will be needed to other positions to prevent salary compression. You don't want to create a situation in which a supervisor is better paid than his/her boss.

The effective impact of the new Department of Labor overtime rule, without additional funds, would be reduction in available funds ranging between 1% (for paying overtime) and 2% (for bumping supervisors to the \$47,476 threshold). Note that these calculations were derived from only those 34 providers for whom a 2014 990 tax form was available. These reductions derive solely from First Line Supervisors and do not include any other employee classification. The particular challenge for supervisory staff may be that these overtime hours are essential to the operation of programs, while limits on overtime use might be put into place for other job classifications. Because of the inclusion of other employees in the Department of Labor guidelines (Residential/Program Managers, Clinical Specialists, Instructors, etc.), the 1-2% must be considered a low estimate.

It is absolutely critical for the committees, and, more broadly, the policymakers in Pennsylvania government to understand that the sole payer for ID/A services is government. That means funding for these services is solely paid by the Commonwealth of Pennsylvania and, for the most part, matched by the federal government. There is no private pay or private insurance in our system. Providers cannot raise taxes like school districts. Providers can't raise prices like the local hardware store. Because 75-80% of our current budgets go to staff salaries and benefits already, there is little cost shifting that we can do to afford these mandated increased expenses. That means that we have no way to cover the costs of this rule without action by either the Commonwealth of Pennsylvania in setting our rates or the federal government in providing a higher Medicaid match to cover these costs - or a combination of both.

Wages and compensation in the ID/A system should be competitive. For too long, these wages have been stagnant. It is in this vein that we do not appear before you in opposition to the US DOL "overtime rule." But we do stand before you in opposition to the fact that this is an unfunded mandate on the Intellectual Disability/Autism system. Without action by the Commonwealth of Pennsylvania or the federal government, it is nearly impossible to envision how these higher wages will be paid.

Thank you for your consideration. PAR will continue to stand as a resource for any questions you may have now and in the future.